

Resolution No.: 17-557
Introduced: September 18, 2012
Adopted: September 25, 2012

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Resolution to issue refunding bonds in order to refund certain lease revenue bonds issued by the Maryland Economic Development Corporation (MEDCO) on behalf of Montgomery County.

Background

1. Pursuant to Resolution No. 14-1303 adopted by the County Council of Montgomery County, Maryland (the "County") on June 11, 2002, the County was authorized to participate in the issuance by the Maryland Economic Development Corporation ("MEDCO") of its Lease Revenue Bonds (Montgomery County Town Square Garage Project), Series 2002A in the original principal amount of \$26,540,000 and its Lease Revenue Bonds (Montgomery County Wayne Avenue Garage Project), Series 2002A in the original principal amount of \$31,580,000 (collectively, the "Series 2002 Bonds") to finance costs of the development, construction and equipping of the Wayne Avenue Garage and Town Square Garage and related improvements located in Silver Spring, Maryland (the "Projects"), which such Series 2002 Bonds were issued pursuant to Trust Agreements between the County and U.S. Bank National Association, successor trustee to Wachovia Bank National Association (the "Trust Agreements").
2. In connection with the issuance of the Series 2002 Bonds, the County entered into ground leases of the land with respect to the Projects to MEDCO. The County and MEDCO entered into separate leases (the "Leases") whereby the County would lease, develop and operate the Town Square Garage and the Wayne Avenue Garage.
3. Section 24 of Article 31 of the Annotated Code of Maryland (2010 Replacement Volume and 2011 Supplement) (the "State Refunding Act") provides that any county in the State of Maryland that has the power under any public general or public local law to borrow money and evidence the borrowing by the issuance of its general obligation bonds, revenue bonds, or other evidences of obligation by whatever name known or source of funds secured, may issue bonds for the purpose of refunding any of its bonds then outstanding, including the payment of

any redemption premium and any interest accrued or to accrue to the date of redemption, purchase or maturity of the bonds or other obligations. Refunding bonds issued under the authority of the State Refunding Act may be issued for public purposes which include realizing savings in the aggregate cost of debt service on either a direct comparison or present value basis.

4. By the terms of the State Refunding Act, the power to issue refunding bonds under the State Refunding Act is additional and supplemental to the County's existing borrowing power.
5. Refunding bonds may be sold on a negotiated basis without solicitation of competitive bids if the County determines in a public meeting that the procedure is in the public interest.
6. Refunding bonds may be issued in one or more series, each series being in whatever principal amount the County determines to be required to achieve the purpose for the issuance of the refunding bonds, which amount may be in excess of the principal amount of the bonds refunded.
7. Pursuant to the Series 2002 Bonds and Section 4.1(a) of the Trust Agreements, Series 2002 Bonds maturing on or after September 15, 2013 are subject to optional redemption in whole at any time, at the option of the County, commencing on September 15, 2012. Pursuant to Section 10 of the Leases, the County has the option to prepay the Lease Payments (as defined in the Leases) thereunder on or after September 1, 2012.
8. The Director of Finance of the County (the "Director of Finance") has recommended that the County prepay the Lease Payments under the Leases and refund all or a portion of the Series 2002 Bonds described in this Resolution under the authority of the State Refunding Act in order to realize savings to the County in the aggregate cost of debt service on either a direct comparison or present value basis.
9. The Director of Finance has recommended that, in light of current market conditions, the County Executive of the County have the authority to determine whether the refunding bonds should be sold on a competitive basis following the solicitation of bids or on a private (negotiated) basis in order to achieve optimum savings to the County in the aggregate cost of debt service.

Action

The County Council for Montgomery County, Maryland, hereby adopts the following resolution:

Section 1. Any defined terms used herein have the meanings given them as set forth in the Background section of this Resolution.

Section 2. The County is hereby authorized to issue, sell and deliver of bonds of the County, at one time or from time to time, and in one or more series, under the authority of the State Refunding Act for the purpose of refunding all or a portion of the Series 2002 Bonds (the "Refunding Bonds"). Refunding Bonds issued in accordance with this Section 2 may be issued in such amount as shall be sufficient (a) to purchase direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, the principal of and interest on which will be sufficient without reinvestment to pay in a timely manner all or any part of the principal of and redemption premium, if any, and interest on the bonds to be refunded and, if so provided by order of the County Executive, a portion of the interest on such Refunding Bonds, and (b) to pay any and all other costs permitted to be paid from the proceeds of such Refunding Bonds under the State Refunding Act, including (without limitation) the costs of issuance of such Refunding Bonds and applicable underwriting fees.

Section 3. Any Refunding Bonds will constitute an irrevocable pledge of the full faith and credit and unlimited taxing power of the County. The County hereby covenants and agrees that in each and every fiscal year in which any of the Refunding Bonds are outstanding, it will levy or cause to be levied ad valorem taxes upon all the assessable property within the corporate limits of the County in rate and amount sufficient to provide for the payment, when due, of the interest and premium (if any) on and principal of all the Refunding Bonds maturing in each such fiscal year, and in the event the proceeds from the ad valorem taxes so levied in any such fiscal year prove inadequate for the above purposes, it will levy additional taxes in the succeeding fiscal year to make up for such deficiency, all in accordance with the provisions of Section 20-18 of the Montgomery County Code, as amended.

Section 4. Refunding Bonds may be sold for a price at, above or below par, plus accrued interest to the date of delivery. Authority is hereby conferred on the County Executive to sell the Refunding Bonds through a public sale or through a private (negotiated) sale without solicitation of competitive bids, as the County Executive by executive order, upon consultation with the Director of Finance and the County's financial advisor, shall determine to be in the best interests of the County. Any sale of Refunding Bonds by private negotiation is hereby determined to be for the County's best interest.

Section 5. Refunding Bonds will be designated, dated, bear interest, be in such denominations, be payable at such times and at such places, mature in such amounts and on such dates, be subject to redemption prior to maturity, have such other provisions, be in such forms and be executed and sealed as the County Executive, in his sole and absolute discretion, determines, by executive order or otherwise. The execution and delivery of Refunding Bonds shall be conclusive evidence of the approval of the form of such Refunding Bonds on behalf of the County.

Section 6. The County Executive may, by executive order or otherwise, provide for the deposit of any proceeds from the Refunding Bonds in trust with a trust company or other banking institution and the investment of such proceeds in such manner as will provide for the payment when due of the principal of and premium (if any) and interest on the bonds refunded with such Refunding Bonds, all in accordance with the provisions of the State Refunding Act.


Section 7. The County Executive may, by executive order or otherwise, specify, prescribe, determine, provide for, approve, execute and deliver (where applicable) such other matters, details, forms, documents or procedures, including (without limitation) notices of sale, forms of proposal, bond purchase agreements, escrow deposit agreements and continuing disclosure agreements, as are necessary, proper or expedient to consummate the authorization, sale, security, issuance, delivery or payment of or for the Refunding Bonds.

Section 8. The County hereby covenants that it will take, or refrain from taking, any and all actions necessary to comply with the provisions of Section 103 and Sections 141 through 150, inclusive, of the Internal Revenue Code of 1986, as amended (the "Code"), applicable to the Refunding Bonds in order to preserve the excludability of the interest on the Refunding Bonds from gross income for Federal income tax purposes. Without limiting the generality of the preceding sentence, the County will (a) not use or permit the use of any of the proceeds of the Refunding Bonds in such manner as would cause the interest on the Refunding Bonds to be includable in gross income for Federal income tax purposes, (b) make periodic determinations of the rebate amount (if any) and timely pay any rebate amount, or installment thereof, to the United States of America, and (c) prepare and timely file Internal Revenue Service Form 8038-G, Information Return for Tax-Exempt Governmental Obligations, or any successor or additional form required by the Internal Revenue Service.

Section 9. In accordance with the provisions of Section 211 of the Charter of the County, the County Executive is hereby authorized to delegate to the Chief Administrative Officer the power and authority to take any and all actions required or permitted to be taken by the County Executive pursuant to this Ordinance.

Section 10. The members of the County Council, the County Executive, the Chief Administrative Officer of the County, the County Attorney, the Director of Finance of the County and the Clerk of the Council, for and on behalf of the County, are hereby authorized and empowered to do all things, execute all instruments, and otherwise take all such action as may be necessary, proper or expedient to carry out the authority conferred by this Resolution, including (without limitation) the execution of certificates of the County, elections, statements, opinions, letters and reports pursuant to application provisions of the Code and the Treasury Regulations prescribed thereunder, subject to the limitations set forth in the State Refunding Act and this Resolution.

Section 11. This Resolution shall take effect upon approval of the President for the County Council.

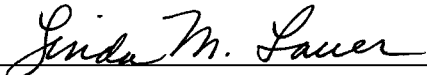


President, County Council for
Montgomery County, Maryland

9/27/12

Date

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council